

SUBSTITUTE ORDINANCE BY FINANCE/EXECUTIVE COMMITTEE

AN ORDINANCE TO REPEAL PART TWO, ARTICLE X, DIVISION 12 OF THE CODE OF ORDINANCES OF THE CITY OF ATLANTA SO AS TO ENACT A NEW PART TWO, ARTICLE X, DIVISION 12, KNOWN AS "THE EQUAL BUSINESS OPPORTUNITY PROGRAM" FOR A FIVE-YEAR PERIOD; CONSISTENT WITH CERTAIN FINDINGS BASED ON THE ECONOMIC RESEARCH SERVICES REPORT AND OTHER DATA RELATIVE TO THE BUSINESS OPPORTUNITIES AVAILABLE TO MINORITY- AND FEMALE-OWNED BUSINESSES IN THE ATLANTA REGION; TO REPEAL CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta is cognizant of the long history of discrimination against Minority- and Female-owned businesses in the Atlanta Region, and has previously enacted various programs to ensure equal opportunities for Minority- and Female-owned businesses; and

WHEREAS, the City of Atlanta desires to be proactive in ensuring that economic opportunities in the Atlanta Region are equally available to all individuals or businesses, including Minority- and Female-owned businesses, regardless of race, gender or ethnicity; and

WHEREAS, a study of available data, including data maintained by the City of Atlanta and other public agencies, data gathered from a survey of businesses in the Atlanta Region, and other commercially available data regarding the economic opportunities available to businesses in the Atlanta Region was conducted by Economic Research Services under the direction of Joan G. Haworth, Ph.D., concluding in the Economic Research Services Report dated October, 2000 (the "ERS Report"); and

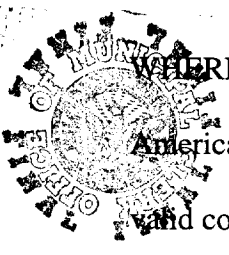


WHEREAS, one purpose of conducting this study was to determine whether the economic opportunities available to Minority- and Female-owned businesses seeking contracting opportunities in the Atlanta Region were equal to those opportunities available to white male-owned businesses in the Atlanta Region; and

WHEREAS, the ERS Report identified statistical disparities evidencing that African American-, Hispanic-, and Female-owned businesses in the Atlanta Region suffer economic disadvantage relative to similar white male-owned firms as a result of discrimination by race, gender and ethnicity; and

WHEREAS, the ERS Report specifically revealed that the annual revenues of African American-, Hispanic- and Female-owned businesses for certain industry classifications are statistically significantly lower than should be expected when firms in the same industry and of the same age and size are compared; and that African American-, Hispanic-, and Female-owned businesses are not participating in the Atlanta business market to the extent that should be expected in the absence of discrimination by race, gender or ethnicity; and

WHEREAS, the ERS Report revealed that Asian-owned firms in the Atlanta Region had higher than expected revenues after adjusting for industry and capacity; and therefore, the ERS Report does not demonstrate that Asian-owned businesses in the Atlanta Region suffer economic disadvantage relative to similar white male-owned firms as a result of discrimination by race, gender and ethnicity; and



WHEREAS, the available data regarding the economic opportunities available to Native American-owned businesses in the Atlanta Region was insufficient to reach any statistically-
and conclusions regarding the revenues of Native American-owned businesses in the Atlanta Region; and

WHEREAS, the City of Atlanta is nevertheless cognizant of concerns that opportunities available to Asian- and Native American-owned businesses seeking contracting opportunities in the Atlanta Region are not equal to those opportunities available to white male-owned businesses in the Atlanta Region; and

WHEREAS, the City of Atlanta is committed to continuing its efforts to gather data and information to enable the City of Atlanta to determine whether such data will demonstrate the necessity in the future to include Asian- and Native American-owned businesses in an equal opportunity program; and

WHEREAS, the City of Atlanta desires to encourage Asian- and Native American-owned businesses in the Atlanta Region to identify themselves as such to the City so that the City may effectively document and evaluate the economic opportunities available to them in the Atlanta Region; and

WHEREAS, the ERS Report demonstrates that an aggressive program by the City of Atlanta to reinforce and support outreach efforts to open contracting opportunities to all businesses, including African American-, Hispanic- and Female-owned businesses, will promote equal



opportunity for all businesses regardless of race, gender or ethnicity, reduce the economic disadvantages suffered by African American-, Hispanic- and Female-owned businesses, and ensure that the City of Atlanta is not a passive participant in ongoing private sector discrimination in the Atlanta Region; and

WHEREAS, the Atlanta City Council, through the Finance and Executive Committee, received the ERS Report from Dr. Joan G. Haworth on November 6, 2000; and

WHEREAS, there was specific, recorded evidence adduced that African American-, Hispanic- and Female-owned businesses experience real and verifiable discrimination by race, gender and ethnicity in the conduct of commerce in the Atlanta Region; and

WHEREAS the City of Atlanta desires to do business only with those contractors who offer equal business opportunities for contracting and subcontracting work or services, without regard to business ownership by race, gender or ethnicity, and who do not tolerate or practice discrimination in contracting or subcontracting work or services in their private and public business activities; and

WHEREAS, the City of Atlanta has determined that it is necessary to use its purchasing and contracting functions to ensure equal competitive opportunities for all businesses, including African American-, Hispanic- and Female-owned businesses, regardless of race, gender or ethnicity; and



WHEREAS, the City recognizes the necessity for periodic review of and reporting on the implementation and operation of this division to ensure that it continues to effectuate equal competitive opportunities for all businesses, including African American-, Hispanic- and Female-owned businesses, regardless of race, gender or ethnicity;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

SECTION ONE:

That Part Two, Division 12 of the Code of Ordinances of the City of Atlanta, Sections 2-1441 through 2-1460 be repealed and deleted in their entirety and that the following Sections be inserted in lieu thereof:

**DIVISION 12
EQUAL BUSINESS OPPORTUNITY**

SECTION 2-1441 Sunset Provisions

This ordinance shall expire on December 31, 2005.

SECTION 2-1442 Short Title

This ordinance shall be known as the "CITY OF ATLANTA'S EQUAL BUSINESS OPPORTUNITY ORDINANCE."

SECTION 2-1443 Definitions

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:



(1) **“African American”** shall mean persons having origins in any black racial group of Africa.

(2) **“African American Business Enterprise (AABE)”** shall mean a business which is an independent and continuing enterprise for profit, performing a commercially useful function, and which is owned and controlled by one or more African Americans.

(3) **“Asian”** shall mean persons having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

(4) **“Asian Business Enterprise (ABE)”** shall mean a business which is an independent and continuing enterprise for profit, performing a commercially useful function, and which is owned and controlled by one or more Asian individuals.

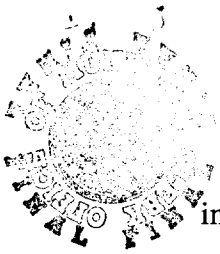
(5) **“Atlanta Region”** shall mean the geographical area consisting of Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Fulton, Gwinnett, Henry and Rockdale counties.

(6) **“Bid”** shall mean and includes a quotation, proposal, or offer by an Eligible Bidder to perform or provide labor, materials, supplies or services to the City for a price for an Eligible Project.

(7) **“Certified AABE, HBE, ABE, NABE or FBE”** shall mean an AABE, HBE, ABE, NABE or FBE which meets the requirements of Section 2-1455 of this division, and which has been approved by the Office of Contract Compliance.

(8) **“Control” or “controlled”** for purposes of determining whether a business is an AABE, HBE, ABE, NABE or FBE, shall mean the African American, Hispanic, Asian, Native American or female owner(s) shall:

(a) Possess and exercise the legal authority and power to manage business assets, good will and daily operations of the business; and



(b) Actively and continuously exercise such managerial authority and power in determining the policies and directing the operations of the business.

(9) **“Eligible Bidder”** shall mean any business which has been approved by the Office of Contract Compliance to submit a quotation, bid, offer or proposal to provide labor, materials, supplies or services to the City on an Eligible Project.

(10) **“Eligible Project”** shall mean:

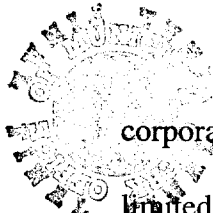
(a) Any City contract as described in Section 2-1188 and Section 2-1189, excluding small purchases not exceeding \$20,000 under Section 2-1190, sole source procurement under Section 2-1191, emergency procurement under Section 2-1192, and federally-funded projects.

(b) For purposes of this division, contract or project “value” shall mean either the expenditure of funds by the City, or the generation of revenue by a contractor as a direct result of a City contract.

(11) **“Female Business Enterprise (FBE)”** shall mean a business which is an independent and continuing enterprise for profit, performing a commercially useful function, and which is owned and controlled by one or more females.

(12) **“Hispanic”** shall mean persons of Spanish or Portuguese culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race.

(13) **“Hispanic Business Enterprise (HBE)”** shall mean a business which is an independent and continuing enterprise for profit, performing a commercially useful function, and which is owned and controlled by one or more Hispanic individuals. For purposes of this division alone, references to racial ownership of businesses shall include HBEs.



(14) **“Joint Venture”** shall mean an association of two or more persons, partnerships, corporations, or any combination of them, established to carry on a single business activity that is limited in scope and duration. The agreement establishing the Joint Venture, partnership or other multi-entity relationship shall be in writing. Further, participation in a Joint Venture shall be based on the sharing of real economic interest in the venture and shall include proportionate control over management, interest in capital acquired by the Joint Venture and interest in earnings.

(15) **“Minority”** shall mean African American or Hispanic.

(16) **“Minority Business Enterprise (MBE)”** shall mean a business which is an independent and continuing operation for profit, performing a commercially useful function, and which is owned and controlled by one or more African Americans or Hispanics.

(17) **“Native American”** shall mean persons having origins in any of the original people of North America, including American Indians, Eskimos and Aleuts.

(18) **“Native American Business Enterprise (NABE)”** shall mean a business which is an independent and continuing enterprise for profit, performing a commercially useful function and which is owned and controlled by one or more Native Americans.

(19) **“Owned”** or **“ownership”** for purposes of determining whether a business is an AABE, HBE, ABE, NABE or FBE, shall mean:

(a) The African American, Hispanic, Asian, Native American or female owner(s), as the context requires, possesses an ownership interest of at least 51 percent of the business;

(b) Such ownership is real and continuing, and goes beyond the mere indicia of ownership of the business reflected in the ownership documents; and



(c) The African American, Hispanic, Asian, Native American or female owner enjoys the customary incidents of ownership and shares in the risks, profits and losses commensurate with the ownership interest, as demonstrated by an examination of the substance, rather than the form of ownership arrangements.

(20) **“Potential Bidder”** shall mean any person who files an application with the Office of Contract Compliance for qualification as an Eligible Bidder to submit a quotation, bid, offer or proposal to provide labor, materials, supplies or services to the City on an Eligible Project.

(21) **“Standard Industrial Classification (SIC) Code”** shall mean the standard code that classifies industries by the type of activity in which such industries are primarily engaged. The SIC Codes and descriptions contained in Standard Industrial Classification Manual, Executive Office of the President, Office of Management and Budget, 1987, and any amendments thereto, are incorporated by reference herein for the purposes of this division.

(22) **“Supplier”** shall mean a warehouser or manufacturer of materials, supplies or equipment which contracts directly with a Potential Bidder or Eligible Bidder to provide such materials, supplies or equipment on a project which involves a trade or service within any or all of the SIC Codes listed in Section 2-1449(a)(1). For purposes of measuring the total contract dollars awarded or paid to Suppliers on Eligible Projects, only amounts paid to Suppliers of goods customarily and ordinarily used based upon standard industry trade practices shall be counted.



SECTION 2-1444

Adoption of the Findings and Conclusions of the Economic Research Services Report

The City Council adopts the findings and conclusions of the Economic Research Services Report dated October, 2000 (referred to in this division as the "ERS Report").

SECTION 2-1445

Findings

Based on the factual predicate established by the ERS Report incorporated in this division, the public hearings on discrimination in the Atlanta Region and all other evidence of record, the City makes the following findings:

- (1) MBEs and FBEs in certain industry classifications in the Atlanta Region have an economic disadvantage relative to similar white male-owned firms as a result of discrimination by race, gender and ethnicity.
- (2) MBEs and FBEs in the Atlanta Region in general receive less revenue than white male-owned firms in the same industry, even taking into account the size (number of employees) and the age (length of time in business) of the firm.
- (3) MBEs and FBEs in the Atlanta Region, as a result of their disadvantageous economic position, earn between 49% and 82% of the revenue that would be predicted in a race, gender and ethnic neutral environment after adjusting for industry and capacity.
- (4) Asian-owned firms in the Atlanta Region have higher than expected revenues after adjusting for industry and capacity.
- (5) The economic disadvantage suffered by Minority-owned firms affects the rest of the Minority population in the Atlanta Region. For example, the Minority unemployment rate is substantially higher in the Atlanta Region than the unemployment rate for the white workforce.



(6) The number of families at or below the poverty level in the Atlanta Region is greater for the Minority population than for the white population.

(7) While firm owners typically have had prior experience in their area of business, the Minority and female composition of firm owners is generally lower than would be expected given their composition in the relevant workforce.

(8) Access to business opportunities derived from white male-owned businesses is less for MBEs and FBEs than for white male-owned firms in the Atlanta Region.

(9) The share of business conveyed from white male-owned businesses to other white male-owned businesses is statistically significantly greater than the share conveyed to MBEs or FBEs in the Atlanta Region.

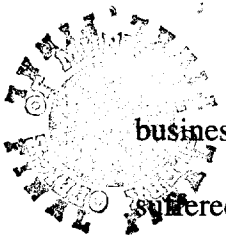
(10) Business conveyed to MBEs is statistically significantly more likely to be conveyed from other MBEs than from white male-owned firms in the Atlanta Region.

(11) Business conveyed to FBEs is statistically significantly more likely to be conveyed from other FBEs than from white male-owned firms in the Atlanta Region.

(12) The business of the City of Atlanta is conducted through an open and competitive bidding process, which seeks the lowest and/or the most responsive and responsible bidder from among firms in the private sector. These characteristics make it a likely institution to open up the economic opportunities for MBEs and FBEs.

(13) An aggressive equal business opportunity program will assist MBEs and FBEs in the Atlanta Region in increasing their revenue to the levels expected for businesses in their industry and of their size and age in a race, gender and ethnic neutral environment.

(14) An aggressive equal business opportunity program will reinforce and support outreach efforts in the private sector to open business and contracting opportunities to all

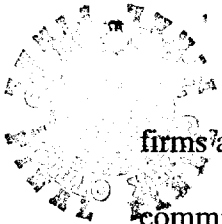


businesses, including MBEs and FBEs, in a way that reduces the economic disadvantages suffered by MBEs and FBEs in the Atlanta Region.

SECTION 2-1446 **Statement of Policy**

It is the policy of the City of Atlanta to promote full and equal business opportunity for all persons doing business with the City. The City has found that African American-, Hispanic- and Female-owned businesses in the Atlanta Region suffer economic disadvantage relative to similar white male-owned firms as a result of discrimination by race, gender and ethnicity. The City has also found that African American-, Hispanic- and Female-owned businesses in the Atlanta Region suffer economic disadvantage relative to similar white male-owned firms because business opportunities are closed to African American-, Hispanic- and Female-owned businesses. The exclusion of and discrimination against African American-, Hispanic- and Female-owned businesses results in a disproportionate amount of contract dollars being paid to non-Minority and non-female businesses. The purpose, therefore, of the Equal Business Opportunity Program is to reinforce and support outreach efforts to open contracting opportunities to all businesses, regardless of race, gender or ethnicity, reduce the economic disadvantages suffered by African American-, Hispanic- and Female-owned businesses as a result of discrimination by race, gender and ethnicity, ensure that the City of Atlanta is not a passive participant in ongoing private sector discrimination, and promote equal opportunity for all businesses in the Atlanta Region, so that equal business opportunity, regardless of race, gender or ethnicity, will become as institutionalized in the Atlanta marketplace as discrimination is today.

The City currently does not possess sufficient data to demonstrate that Asian- and Native American-owned businesses suffer economic disadvantage relative to similar white male-owned



firms as a result of discrimination by race, gender and ethnicity. Nevertheless, the City is committed to gathering data and information necessary to determine whether inclusion of Asian- and Native American-owned businesses in an equal opportunity program would be warranted in the future. An additional purpose of this ordinance, therefore, is to encourage Asian- and Native American-owned businesses in the Atlanta Region to identify themselves as such to the City and become certified as such by the City, so that the City may monitor, document and evaluate the economic opportunities available to them in the Atlanta Region.

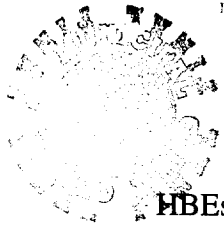
SECTION 2-1447 **Applicability**

This division shall apply to all Eligible Projects as defined in Section 2-1443.

SECTION 2-1448 **Duties of the Office of Contract Compliance**

Under this division, the Office of Contract Compliance shall have the following authority and duties for the encouragement of equal business opportunity and the implementation of the Equal Business Opportunity Program under this division:

- (1) Administration and enforcement of this division.
- (2) Establishment of written procedures, informal guidelines, and forms as may be necessary to effectuate this division.
- (3) Monitoring compliance with the requirements of this division.
- (4) Approval of businesses as Eligible Bidders, in accordance with the standards set forth in this division.
- (5) Certification of businesses as AABEs, HBEs, ABEs, NABEs and FBEs in accordance with the standards set forth in this division.



(6) Development of databases to be maintained as a public record of certified AABEs, HBEs, ABEs, NABEs and FBEs, and of approved Eligible Bidders.

(7) Determination of whether Potential Bidders are approved as Eligible Bidders under Section 2-1449(a)(2), and the issuance of written statements denying eligibility and stating the reasons therefor.

(8) Ensuring compliance with requirements for Mentor-Protégé or Joint Venture arrangements under Section 2-1450 and Section 2-1451, as applicable; and determination of whether Eligible Bidders have demonstrated good faith efforts to enter into Mentor-Protégé or Joint Venture relationships, where applicable.

(9) Investigation of alleged violations of this division, and the issuance of written statements following any determination of such investigation, stating the reasons therefor and any penalty to be imposed.


(10) Determination of whether any of the penalties set forth in Section 2-1454 should be applied to a business.

(11) Attendance at pre-bid, pre-proposal, pre-construction and pre-work conferences.

(12) Provision to business entities of all forms, applications, documents and papers necessary to comply with this division.

(13) Provision to Potential Bidders and Eligible Bidders of names and contact information of certified MBEs and FBEs for each Eligible Project, to reinforce and support outreach efforts by Potential Bidders and Eligible Bidders.

(14) Notification by certified mail that a Potential Bidder who has bid on a contract, and whose bid was rejected because the Potential Bidder was not approved as an Eligible Bidder, has the right to appeal a determination of ineligibility, said appeal to be determined by a contract



compliance hearing officer, as provided in Section 2-1456, within seven (7) calendar days of receipt of the notice of ineligibility.

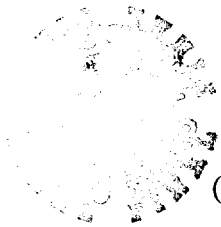
(15) Notification by certified mail that an Eligible Bidder who has bid on and who otherwise would have been awarded a contract has the right to appeal a determination of noncompliance with this division, said appeal to be determined by a contract compliance hearing officer, as provided in Section 2-1456, within seven (7) calendar days of receipt of the notice of noncompliance.

(16) Notification by certified mail that an applicant who has been denied certification as an AABE, HBE, ABE, NABE or FBE, or denied approval as an Eligible Bidder, has the right to appeal such determination, said appeal to be determined by a contract compliance hearing officer, as provided in Section 2-1456, within seven (7) calendar days of receipt of the notice of such determination.

(17) Notification to the director of the Bureau of Purchasing and Real Estate of any determination of noncompliance with this division, and of any appeal from any such determination.

(18) Monitoring, for data gathering and informational purposes, utilization of ABEs and NABEs on Eligible Projects.

(19) Maintenance of documents, forms, records or data regarding this program as provided in this division, including: (a) documents, forms, records or data regarding the dollar amounts subcontracted to or expended for services performed by subcontractors and Suppliers on Eligible Projects, including the race and gender ownership of each subcontractor and Supplier; (b) documents, forms, records or data regarding Eligible Bidders; and (c) documents, forms, records or data regarding certified AABEs, HBEs, ABEs, NABEs and FBEs.



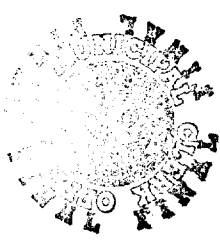
(19) Development and implementation of outreach and assistance programs to promote equal contracting opportunities for all businesses that wish to do business with the City of Atlanta, in accordance with Section 2-1457.

SECTION 2-1449 **Eligibility to Bid on City Contracts**

(a) No bid on a City contract for an Eligible Project shall be accepted unless the bid is submitted by an Eligible Bidder as approved by the Office of Contract Compliance. In order to be approved as an Eligible Bidder for the submission of a bid on a City contract for an Eligible Project, a Potential Bidder must comply with the following requirements:

(1) The Potential Bidder must submit a written application to do business with the City on a form approved and provided by the Office of Contract Compliance. The Potential Bidder shall indicate on the application the trade or service area or areas, as defined by designated SIC Codes, in which the Potential Bidder is engaged. The SIC Codes applicable to those trade or service areas for which Eligible Projects will be awarded are as follows:

<u>SIC Code</u>	<u>Description</u>
07	Agricultural Services
15	Building Construction - General Contractors and Operative Builders
16	Heavy Construction other than Building Construction - Contractors
17	Construction - Special Trade Contractors
42	Motor Freight Transportation and Warehousing
73	Business Services

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- (2) In order to be approved as an Eligible Bidder, a Potential Bidder must demonstrate that the process for contracting or utilizing individuals or businesses as subcontractors or Suppliers for work on projects undertaken by the Potential Bidder is open to individuals or businesses regardless of race, gender or ethnicity, by fulfilling one of the three following alternative requirements (**either** (A), (B), **or** (C)):

(A) *Documentation of prior MBE and FBE participation.* A Potential Bidder will fulfill this requirement by verifying in writing on a form approved and provided by the Office of Contract Compliance and by providing written documentation demonstrating that, for all work performed by the Potential Bidder on projects in the Atlanta Region during the two-year period immediately preceding the date of its application to become an Eligible Bidder, where such projects involved a trade or service included within any or all of the SIC Codes listed in paragraph (a)(1) of this section, at least 17% of the total project dollars awarded to the Potential Bidder during the two year period were subcontracted to or expended for services performed by one or more MBEs (AABEs and HBEs), **and** at least 17% of the total project dollars awarded to the Potential Bidder were subcontracted to or expended for services performed by one or more FBEs. Should the Potential Bidder believe that the two year time frame does not accurately reflect its utilization of MBEs and/or FBEs on a particular project, the Potential Bidder may provide written documentation demonstrating its utilization



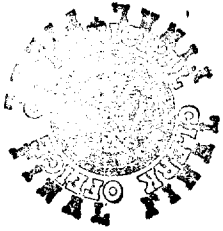
of MBEs and FBEs on that project from the starting date of the project through the date of the application to become an Eligible Bidder.

The written documentation required to be submitted to meet the requirements of this paragraph shall include, without limitation, the following information:

(i) A list and description of all private sector and governmental projects undertaken in the Atlanta Region during the two-year period immediately preceding the date of its application to become an Eligible Bidder, which involved a trade or service included within any or all of the SIC Codes listed in paragraph (a)(1) of this section;

(ii) For each project listed in paragraph (a)(2)(A)(i) of this section, the total dollar value of the project, the name of each business that performed services on such project, a description of the services performed by each business, the SIC Code or Codes applicable to such services, the total project dollars paid to each business, the race and gender ownership of each business, and contact information for each business; and

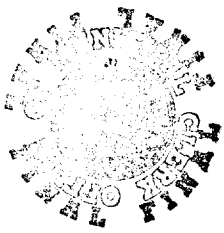
(iii) For each project listed in paragraph (a)(2)(A)(i) of this section, a statement of whether a Joint Venture or Mentor-Protégé relationship was entered into, and if so, the names of the businesses that participated in the Joint Venture or Mentor-Protégé team, the race and gender ownership of each business, the type and amount of work performed by each business, the SIC Code or Codes applicable to such work, and contact information for each business.



For purposes of calculating the percentage of total contract dollars subcontracted to or expended for services performed by MBEs and FBEs, the utilization of any business that is both an MBE and an FBE (i.e. owned and controlled by one or more African American females or owned and controlled by one or more Hispanic females) shall be counted entirely as **either** MBE utilization **or** FBE utilization. Provided, however, that the Potential Bidder may count up to a total of 4% of the utilization of such firm or firms in the other category. For example, if 10% of a Potential Bidder's total project dollars were expended for services performed by an African American Female-owned firm, the Potential Bidder may list such utilization as 10% MBE utilization and 4% FBE utilization, or 4% MBE utilization and 10% FBE utilization. The Potential Bidder may not double count more than 4% of its utilization, regardless of the number of firms utilized which are both MBE and FBE.

For purposes of calculating the percentage of total contract dollars awarded or paid to MBE or FBE Suppliers, only amounts paid to manufacturers or warehousemen of goods customarily and ordinarily used based upon standard industry trade practices shall be counted.

In the event that the Potential Bidder has not undertaken any projects in the Atlanta Region within two years prior to the date of its application which involved a trade or service included within any or all of the SIC Codes listed in paragraph (a)(1) of this section, the Potential Bidder may meet the requirements set forth in this paragraph by verifying that, during the two-year period immediately preceding the date of its application to become an Eligible Bidder, it

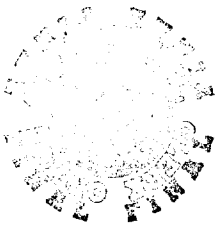


has met the measures set forth above for projects undertaken in the Atlanta Region which involved a trade or service included within all other SIC Codes.

(B) *Documentation of prior good faith outreach efforts.* A Potential Bidder will fulfill this requirement by verifying in writing on a form approved by the Office of Contract Compliance and by providing written documentation demonstrating that, during the two year period immediately preceding the date of this application, it engaged in good faith outreach efforts to identify, contact, contract with, or otherwise utilize all businesses, including MBEs (AABEs and HBEs) and FBEs, as subcontractors or Suppliers for all projects undertaken in the private sector or for a governmental entity which involved a trade or service included within any or all of the SIC Codes listed in paragraph (a)(1) of this section. For purposes of this paragraph, “good faith outreach efforts” shall include documentation of **all** of the following:

(i) The Potential Bidder contacted the private sector or governmental entity that awarded the contract, other private sector and government entities, or local MBE and FBE organizations, to identify qualified and available businesses, including MBEs and FBEs, regardless of race, gender or ethnicity.

(ii) The Potential Bidder placed notices of opportunities for subcontracting work for qualified businesses in newspapers, trade journals, and other relevant publications, including publications specifically targeted to MBEs and FBEs, or communicated such notices of opportunities via the Internet or by other available media or means.



(iii) The Potential Bidder submitted invitations to bid to potential qualified businesses, including MBEs (AABEs and HBEs) and FBEs, regardless of race, gender or ethnicity.

(iv) The Potential Bidder included in such notices and invitations a full disclosure of the criteria upon which bids, proposals or quotes would be evaluated, and also included contact information for inquiries, submissions, or requests to review any necessary bid documents.

(v) The Potential Bidder promptly responded to inquiries, provided necessary physical access and time for interested businesses to fully review all necessary bid documents, and otherwise provided information, access and time necessary to allow all interested businesses to prepare bids and quotes, regardless of race, gender or ethnicity.

(vi) The Potential Bidder considered, or hired, or otherwise utilized qualified and available businesses, including MBEs and FBEs, regardless of race, gender or ethnicity.

(C) *Commitment to future good faith outreach efforts.* A Potential Bidder will fulfill this requirement by agreeing in writing on a form approved and provided by the Office of Contract Compliance that, during the period for which it is approved as an Eligible Bidder, it will engage in good faith outreach efforts to identify, contact, contract with, or otherwise utilize all businesses, including certified MBEs (AABEs and HBEs) and FBEs, as subcontractors or Suppliers on all projects in the private sector or for a governmental entity for which it submits a bid or is awarded a contract and which involve a trade or service included within



any or all of the SIC Codes listed in paragraph (a)(1) of this section, and by providing written documentation demonstrating its compliance with this paragraph as required by the Office of Contract Compliance. For purposes of this paragraph, “good faith outreach efforts” shall include the following:

(i) *Outreach.* The Potential Bidder shall comply with paragraphs (a)(2)(B)(i) – (vi) of this section on all projects in the private sector or for a governmental entity for which it submits a bid or is awarded a contract and which involve a trade or service included within any or all of the SIC Codes listed in paragraph (a)(1) of this section, and the Eligible Bidder shall maintain written documentation demonstrating such compliance as required by the Office of Contract Compliance.

(ii) *Determination of good faith by the Office of Contract Compliance.* No Eligible Bidder approved under this paragraph (a)(2)(C) shall be awarded a contract on an Eligible Project unless the Office of Contract Compliance determines that the Eligible Bidder has satisfied the good faith outreach efforts requirement of this paragraph on such Eligible Project.

Accordingly, each Eligible Bidder shall submit with each bid submission on a contract for an Eligible Project: (1) a completed and signed Subcontractor Project Plan as described in paragraph (b) of this section; and (2) written documentation demonstrating the Eligible Bidder’s good faith outreach efforts to identify, contact, contract with, or utilize businesses, including certified MBEs (AABEs and HBEs) and FBEs, as



subcontractors or Suppliers on the Eligible Project, which shall include documentation of **all** of the following:

- a. The Eligible Bidder contacted the Office of Contract Compliance, other private sector and government entities, or local MBE and FBE organizations, to identify available businesses to work on the Eligible Project, including certified MBEs and FBEs, regardless of race, gender or ethnicity.
- b. The Eligible Bidder placed notices of opportunities for qualified businesses to perform subcontracting work on the Eligible Project in newspapers, trade journals, and other relevant publications, including publications specifically targeted to MBEs and FBEs, or communicated such notices of opportunities via the Internet or by other available media or means.
- c. The Eligible Bidder submitted invitations to bid for work on the Eligible Project to qualified businesses, including certified MBEs and FBEs, regardless of race, gender or ethnicity.
- d. The Eligible Bidder included in such notices and invitations a full disclosure of the criteria upon which bids, proposals or quotes would be evaluated, and also included contact information for inquiries, submissions, or requests to review any necessary bid documents.
- e. The Eligible Bidder promptly responded to inquiries, provided necessary physical access and time for



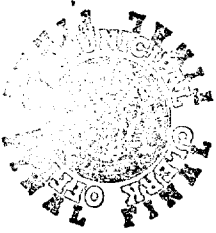
interested businesses to fully review all necessary bid documents, and otherwise provided information, access and time necessary to allow all interested businesses to prepare bids and quotes, regardless of race, gender or ethnicity.

f. The Eligible Bidder considered, or hired, or otherwise utilized qualified and available businesses on the Eligible Project, including certified MBEs and FBEs, regardless of race, gender or ethnicity.

g. For each business which contacted or was contacted by the Eligible Bidder regarding subcontracting or services on the Eligible Project, but was not contracted with or otherwise utilized on the Eligible Project, the Eligible Bidder shall provide a written statement setting forth the dates of such contacts, the nature of such contacts, and the reasons why an agreement was not reached regarding work to be performed on the project. The Eligible Bidder shall maintain all written documents reflecting such contacts, including bids, quotes and proposals.

The Office of Contract Compliance shall determine whether an Eligible Bidder has satisfied the good faith outreach efforts requirement of this paragraph based on its review of the documentation required under this paragraph, and its review of relevant facts and circumstances.

(iii) *Good faith review of Subcontractor Project Plan.* In reviewing the Subcontractor Project Plan submitted by an Eligible Bidder



to determine whether the Eligible Bidder has satisfied the good faith outreach efforts requirements of this paragraph, the Office of Contract Compliance will consider, among other things, the total project dollars subcontracted to or expended for services performed by other businesses, including certified MBEs and FBEs, whether such businesses perform commercially useful functions in the work of the contract based upon standard industry trade practices, whether any amounts paid to Supplier businesses are for goods customarily and ordinarily used based upon standard industry trade practices, and the availability of certified MBEs and FBEs within the relevant SIC Codes for such Eligible Project.

(3) A Potential Bidder that is not approved as an Eligible Bidder must submit a completed and signed written application to become an Eligible Bidder **before** it will be allowed to bid on a contract for an Eligible Project according to the following:

(a) In order to be approved as an Eligible Bidder under paragraph (a)(2)(A) or paragraph (a)(2)(B) of this section, the application for approval as an Eligible Bidder and all supporting documents must be received by the Office of Contract Compliance no later than **thirty (30) calendar days prior** to the date bids are received on such Eligible Project. If the application to become an Eligible Bidder is not received by the Office of Contract Compliance at least thirty (30) calendar days prior to the date bids are received on such Eligible Project, then the Potential Bidder may only be approved as an Eligible Bidder for such Eligible Project under paragraph (a)(2)(C) of this section.

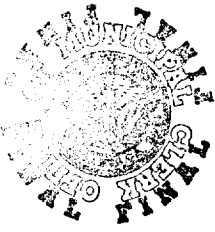


(b) A Potential Bidder who fails to submit an application for approval as an Eligible Bidder under paragraph (a)(2)(A) or paragraph (a)(2)(B) of this section within thirty (30) calendar days prior to the date bids are received on an Eligible Project, and who otherwise meets the requirements for approval as an Eligible Bidder under paragraph (a)(2)(A) or paragraph (a)(2)(B) of this section, may elect to be approved as an Eligible Bidder under paragraph (a)(2)(A) or paragraph (a)(2)(B) of this section on such future Eligible Projects for which the date bids are received is at least thirty (30) calendar days after the date such application is received.

(c) In order to be approved as an Eligible Bidder under paragraph (a)(2)(C) of this section, the application to become an Eligible Bidder must be received by the Office of Contract Compliance no later than **three (3) calendar days prior** to the date bids are received on such Eligible Project.

(4) No bid on a City contract for an Eligible Project shall be accepted from a Joint Venture or Mentor-Protégé team unless each participant in the Joint Venture or Mentor-Protégé team is approved independently as an Eligible Bidder. If any participant in the Joint Venture or Mentor-Protégé team is approved or can only be approved as an Eligible Bidder under paragraph (a)(2)(C) of this section, then the Joint Venture or Mentor-Protégé team must comply with the requirements of paragraph (a)(2)(C) of this section.

(5) On such Eligible Projects in which a Joint Venture or Mentor-Protégé relationship is required, the Office of Contract Compliance shall determine whether good faith efforts to enter into a Joint Venture or Mentor-Protégé relationship have been



adequately demonstrated based on a review of relevant facts, documents and circumstances, regardless of whether any Eligible Bidder submitting a bid is approved under paragraph (a)(2)(A), (a)(2)(B) or (a)(2)(C) of this section.

(6) If a Potential Bidder is denied approval as an Eligible Bidder on the basis of information submitted, the business cannot reapply for certification for a period of one year from the date of the notice of denial; provided, that such business shall have the right to appeal such denial under Section 2-1456, and to be approved as an Eligible Bidder if such appeal is decided in its favor; and provided further, that a Potential Bidder seeking approval as an Eligible Bidder under paragraphs (a)(2)(A) or (a)(2)(B) who has not previously been approved as an Eligible Bidder under paragraph (a)(2)(C) may elect to be immediately approved as an Eligible Bidder under paragraph (a)(2)(C) in the event that such Potential Bidder's application for approval as an Eligible Bidder under paragraphs (a)(2)(A) or (a)(2)(B) is denied.

(b) Each Eligible Bidder approved under **paragraph (a)(2)(C)** of this section shall submit with each bid submission on a City contract for an Eligible Project a completed and signed Subcontractor Project Plan, in a form approved and provided by the Office of Contract Compliance, which lists the name, address, telephone number and contact person of each subcontractor or other business to be used in the contract, the SIC Code and the type of work or service each business will perform, the dollar value of the work and the scope of work, the ownership of each business by race and gender, and, if applicable, the AABE, HBE, ABE, NABE or FBE certification number of each business. No Potential Bidder who is approved as an Eligible Bidder under **paragraph (a)(2)(C)** shall be awarded a contract on an Eligible Project unless a Subcontractor Project Plan is submitted with its bid submission.



Each Eligible Bidder approved under **paragraphs (a)(2)(A) or (a)(2)(B)** of this section and awarded a contract on an Eligible Project shall, after the award of such contract and prior to the execution of such contract, submit a completed and signed Subcontractor Project Plan, in a form approved and provided by the Office of Contract Compliance, which lists the name, address, telephone number and contact person of each subcontractor or other business to be used in the contract, the SIC Code and the type of work or service each business will perform, the dollar value of the work and the scope of work, the ownership of each business by race and gender, and, if applicable, the AABE, HBE, ABE, NABE or FBE certification number of each business. No contract on any Eligible Project shall be executed unless the Eligible Bidder awarded the contract has submitted a Subcontractor Project Plan for such Eligible Project.

(c) Each Eligible Bidder awarded a contract on an Eligible Project must maintain its status as an Eligible Bidder for the duration of the Eligible Project. Any Eligible Bidder awarded a contract on an Eligible Project who fails to maintain its status as an Eligible Bidder for the duration of the Eligible Project shall be subject to any or all of the penalties contained in Section 2-1454.

(d) The approval of an Eligible Bidder to bid on Eligible Projects shall expire two years from the date of the approval of the application. Following the expiration date, a business is no longer an Eligible Bidder. A former Eligible Bidder must submit a written application to the Office of Contract Compliance and fulfill the requirements imposed on Potential Bidders in paragraph (a) of this section in order to bid on Eligible Projects. A Potential Bidder that has previously been approved as an Eligible Bidder under paragraph **(a)(2)(C)** of this section may not again be approved as an Eligible Bidder under paragraph **(a)(2)(C)**. All Potential Bidders who



have been previously approved as an Eligible Bidder under paragraph (a)(2)(C) must be approved under paragraph (a)(2)(A) or paragraph (a)(2)(B) in order to bid on Eligible Projects.

(e) The Office of Contract Compliance may revoke approval of a Potential Bidder as an Eligible Bidder for any of the following reasons, which are not intended to be all-inclusive:

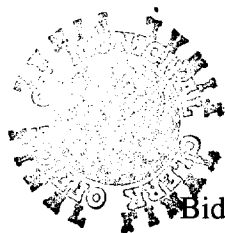
(1) The Potential Bidder intentionally provides false information in connection with fulfilling any of the requirements of paragraph (a) of this section.

(2) The Potential Bidder fails to submit within a reasonable time period information requested by the Office of Contract Compliance.

(3) The Potential Bidder otherwise fails to comply with the requirements of this section.

A Potential Bidder whose approval as an Eligible Bidder has been revoked may not reapply to become an Eligible Bidder for a period of one year from the date of the notice of revocation of approval, provided that such Potential Bidder shall have the right to appeal such revocation of approval under Section 2-1456. If, immediately prior to revocation of approval, the Potential Bidder was approved as an Eligible Bidder under Section 2-1449(a)(2)(C), then upon reapplication and approval under Section 2-1449(a)(2)(C), such Potential Bidder shall only be approved as an Eligible Bidder under Section 2-1449(a)(2)(C) for the period of time that remained in the prior approval term at the time such prior approval was revoked.

(f) Upon the award of a contract to an Eligible Bidder on an Eligible Project, the Office of Contract Compliance shall be authorized to assist the Eligible Bidder in its continuing good faith efforts to utilize AABEs, HBEs, ABEs, NABEs and FBEs at a level comparable to the availability of such businesses for such Eligible Projects.



(g) Nothing in this section shall be construed to authorize or require any Potential Bidder or Eligible Bidder to discriminate against or grant preferential treatment to any business on the basis of race, gender or ethnicity in connection with the identification, contact, contracting or utilization of any such business on Eligible Projects.

SECTION 2-1450 **Requirements for Mentor-Protégé Relationships**

(a) The Office of Contract Compliance shall encourage, where economically feasible, establishment of Mentor-Protégé relationships to ensure prime contracting opportunities for all businesses, including certified MBEs and FBEs, on Eligible Projects.

(b) Based upon the scope of work and market availability, the Office of Contract Compliance shall determine on a project-by-project basis on all Eligible Projects valued over \$10,000,000 whether good faith efforts to enter into a Mentor-Protégé relationship shall be required for such Eligible Project. On such Eligible Projects in which good faith efforts to enter into a Mentor-Protégé relationship is required, no bid shall be accepted unless submitted by a Mentor-Protégé team that is comprised of Eligible Bidders approved under Section 2-1449(a), unless the Office of Contract Compliance has determined that good faith efforts to enter into a Mentor-Protégé relationship have been demonstrated. The Office of Contract Compliance shall determine whether good faith efforts to enter into a Mentor-Protégé relationship have been adequately demonstrated based on a review of relevant facts, documents and circumstances.

(c) On such Eligible Projects in which good faith efforts to enter into a Mentor-Protégé relationship is required, the Mentor and Protégé team members must have different race ownership, different gender ownership, or both. MBE or FBE members of the Mentor-Protégé team must be certified as such by the Office of Contract Compliance, and the Mentor-Protégé



team shall include in its bid submittal the MBE or FBE certification number of each MBE or FBE team member. A bid submitted by a Mentor-Protégé team comprised of Eligible Bidders with **both** the same race **and** gender ownership shall be deemed non-responsive and rejected.

(d) As to each Mentor-Protégé relationship under this section, a written Mentor-Protégé agreement must be completed by both parties to the Mentor-Protégé relationship and executed before a notary public, which clearly delineates the rights and responsibilities of the Mentor and Protégé, complies with any requirements of the Office of Contract Compliance as set forth in bid documents or otherwise, and provides that the Mentor-Protégé relationship shall continue for, at a minimum, the duration of the project.

(e) The Office of Contract Compliance shall review and approve all contractual agreements regarding the terms and provisions of the Mentor-Protégé relationship prior to the award of a contract on an Eligible Project to the Mentor-Protégé team. Mentor-Protégé teams may submit agreements for pre-approval no later than fourteen (14) calendar days prior to the date set for receipt of bids on an Eligible Project. Otherwise, agreements must be submitted on or before the date set for receipt of bids on an Eligible Project. A bid submitted by a Mentor-Protégé team that does not include a satisfactory written Mentor-Protégé agreement in accordance with the requirements of this section shall be deemed non-responsive and rejected.

(f) During the term of the contract the Mentor and Protégé businesses must each provide to the Office of Contract Compliance a quarterly summary of the mentor skills provided to the Protégé, which shall include:

(1) The time spent between Mentor and Protégé businesses in furtherance of the Mentor Protégé relationship;



(2) The nature and extent of managerial, technical, financial and/or bonding assistance provided;

(3) A summary and explanation of any projects bid on or undertaken by the Mentor-Protégé team in the private sector or for a governmental entity other than the City of Atlanta; and

(4) Any additional or further information required by the Office of Contract Compliance as set forth in bid documents or otherwise.

(g) No officer, director, employee or member of the Mentor-Protégé team shall be allowed to bid or otherwise participate independently on a contract where the Mentor-Protégé team is bidding or otherwise participating.

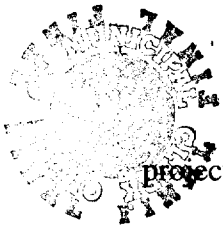
(h) Each member of the Mentor-Protégé team shall provide the Office of Contract Compliance access to review all records pertaining to Mentor-Protégé agreements before and after the award of a contract in order to reasonably assess compliance with this division.

(i) *Penalties for noncompliance.* Any Eligible Bidder who fails to comply with this section shall be subject to any or all of the penalties contained in Section 2-1454.

SECTION 2-1451 **Requirements for Joint Ventures**

(a) The Office of Contract Compliance shall encourage, where economically feasible, establishment of Joint Ventures to ensure prime contracting opportunities for all businesses, including certified MBEs and FBEs, on Eligible Projects.

(b) Based upon the scope of work and market availability, the Office of Contract Compliance shall determine on a project-by-project basis on all Eligible Projects valued over \$10,000,000 whether good faith efforts to enter into a Joint Venture shall be required for such

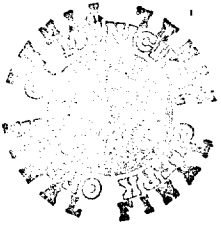


project. On such projects in which good faith efforts to enter into a Joint Venture relationship is required, no bid shall be accepted unless submitted by a Joint Venture comprised of Eligible Bidders approved under Section 2-1449(a), unless the Office of Contract Compliance has determined that good faith efforts to enter into a Joint Venture have been demonstrated. The Office of Contract Compliance shall determine whether good faith efforts to enter into a Joint Venture have been adequately demonstrated based on a review of relevant facts, documents and circumstances.

(c) On such Eligible Projects in which good faith efforts to enter into a Joint Venture relationship is required, the Joint Venture member businesses must have different race ownership, different gender ownership, or both. MBE or FBE members of the Joint Venture must be certified as such by the Office of Contract Compliance, and the Joint Venture team shall include in its bid submittal the MBE or FBE certification number of each MBE or FBE Joint Venture member. A bid submitted by a Joint Venture comprised of Eligible Bidders with **both** the same race **and** gender ownership shall be deemed non-responsive and rejected.

(d) As to each Joint Venture under this section, a written Joint Venture agreement must be completed by all parties to the Joint Venture and executed before a notary public, which clearly delineates the rights and responsibilities of each member or partner, complies with any requirements of the Office of Contract Compliance as set forth in bid documents or otherwise, and provides that the Joint Venture shall continue for, at a minimum, the duration of the project.

(e) The Office of Contract Compliance shall review and approve all contractual agreements regarding the terms and provisions of each Joint Venture relationship prior to the award of a contract on an Eligible Project to the Joint Venture, including agreements pertaining to:



- (1) The initial capital investment of each venture partner;
- (2) The proportional allocation of profits and losses to each venture partner;
- (3) The sharing of the right to control the ownership and management of the

Joint Venture;

- (4) Actual participation of the venture partners on the project;
- (5) The method of and responsibility for accounting;
- (6) The method by which disputes are resolved; and
- (7) Any additional or further information required by the Office of Contract

Compliance as set forth in bid documents or otherwise.

Joint Ventures may submit agreements for pre-approval no later than fourteen (14) calendar days prior to the date set for receipt of bids on an Eligible Project. Otherwise, agreements must be submitted on or before the date set for receipt of bids on an Eligible Project. A bid submitted by a Joint Venture that does not include a satisfactory written Joint Venture agreement in accordance with the requirements of this section shall be deemed non-responsive and rejected.

(f) The Joint Venture, and each member of the Joint Venture, shall provide the Office of Contract Compliance access to review all records pertaining to Joint Venture agreements before and after the award of a contract in order to reasonably assess compliance with this division.

(g) *Penalties for noncompliance.* Any Eligible Bidder who fails to comply with this section shall be subject to any or all of the penalties contained in Section 2-1454.



SECTION 2-1452

Mediation of Disputes Between Joint Venture and Mentor-Protégé Team Members

(a) If, after the award of a contract to a Joint Venture or Mentor-Protégé team, any member of the Joint Venture or Mentor-Protégé team believes that the terms and conditions of the agreement as approved by the Office of Contract Compliance have not been complied with, then such member may seek review and mediation of such agreement before the director of the Office of Contract Compliance. The request for review must be made in writing.

(b) Within twenty (20) calendar days of receipt of a request for review, if the dispute has not already been resolved informally among the parties, the director shall set a mediation date, and the director shall provide written notice of the mediation date to each member of the Joint Venture or Mentor-Protégé team.

(c) The director shall have authority to make recommendations and resolve issues in dispute.

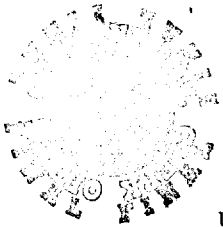
(d) The director's response to all disputes must be provided in writing to the members of the Joint Venture or Mentor-Protégé team within twenty (20) calendar days after completion of mediation.

(e) With the consent of the parties to the dispute, the director shall have the option of referring mediation proceedings to a qualified outside mediator.

SECTION 2-1453

Maintenance of Records and Reports by Contractors

(a) *Annual Compliance Report.* Each Eligible Bidder must submit, within one year after the date of its approval as an Eligible Bidder, an annual compliance report in a form approved and provided by the Office of Contract Compliance. Each report shall include, among other information:



(1) A list and description of all private sector and governmental projects undertaken in the Atlanta Region within the preceding year, which involved a trade or service included within any or all of the SIC Codes listed in Section 2-1449(a)(1);

(2) For each project listed in paragraph (a)(1) of this section, the total dollar value of the project, the name of each business that performed services on such project, a description of the services performed by each business, the SIC Code or Codes applicable to such services, the total project dollars paid to each business, the race and gender ownership of each business, contact information for each business, and, if applicable, the AABE, HBE, ABE, NABE or FBE certification number of each business; and

(3) For each project listed in paragraph (a)(1) of this section, a statement of whether a Joint Venture or Mentor-Protégé relationship was entered into, and if so, the names of the businesses that participated in the Joint Venture or Mentor-Protégé team, the race and gender ownership of each business, the type and amount of work performed by each business, contact information for each business, and, for Joint Ventures, the percentage interest of each participant in the Joint Venture; and

(4) For each project listed in paragraph (a)(1) of this section, a summary of the Eligible Bidder's good faith outreach efforts to identify, contact, contract with, or otherwise utilize all businesses, including MBEs and FBEs, as subcontractors or Suppliers on such project, and efforts made, if any, to enter into a Joint Venture or Mentor-Protégé relationship on such project.

(b) *Monthly Participation Reports.* Each Eligible Bidder awarded a contract on an Eligible Project must submit monthly participation reports in a form approved by the Office of Contract Compliance. Each report shall include, among other information, the name, address,



telephone number and contact person of each subcontractor or other business used to date, the SIC Code and the type of work or service each business has performed, a summary of the number and dollar amounts contracted to or committed to each business during the term of the contract, the dollar amounts actually paid to each business during the current month, the total dollar amounts actually paid to each business to date, the ownership of each business by race and gender, and, if applicable, the AABE, HBE, ABE, NABE or FBE certification number of each business. Monthly participation reports shall be submitted to the Office of Contract Compliance on the fifth day of each month following the award of the Eligible Project.

(c) Eligible Bidders awarded contracts on Eligible Projects shall maintain participation reports for a period of two years after the completion of the applicable contract or project.

(d) All Eligible Bidders shall create and maintain, for a minimum of two years after the date such Eligible Bidder is approved as such by the Office of Contract Compliance, all records and documents reasonably necessary to demonstrate and verify the Eligible Bidder's compliance with the requirements of this division. Upon request by the director, an Eligible Bidder shall either submit to the Office of Contract Compliance or permit inspection of such documents as are requested by the Office of Contract Compliance to verify compliance with the requirements of this division.

SECTION 2-1454 **Penalties for Noncompliance**

A contractor who fails to comply with any portion of this division, and whose failure to comply continues for a period of thirty (30) calendar days after the contractor receives written



notice of such noncompliance from the director of the Office Contract Compliance, shall be subject to any or all of the following penalties:

- (a) Withholding of ten percent of all future payments under the involved Eligible Project until it is determined that the contractor is in compliance with this division.
- (b) Withholding of all future payments under the involved Eligible Project until it is determined that the contractor is in compliance with this division.
- (c) Cancellation of the involved Eligible Project.
- (d) Revocation of approval of the contractor as an Eligible Bidder for a period of up to one year.

SECTION 2-1455

Certification of African American-, Hispanic-, Asian-, Native American- and Female-Owned Businesses

(a) *Application for certification.* AABEs, HBEs, ABEs, NABEs or FBEs who wish to be certified as such by the Office of Contract Compliance must submit a written certification application on a form approved and provided by the Office of Contract Compliance. The director of Office of Contract Compliance may, in his or her discretion, deny certification to applicants who fail to promptly submit necessary documentation or fail to complete the application process within a reasonable period.

(b) *Standards.* The Office of Contract Compliance shall determine the eligibility of AABEs, HBEs, ABEs, NABEs and FBEs to be certified according to the following standards:

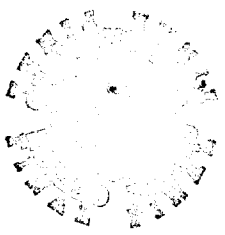
- (1) *Bona fide* racial or ethnic group memberships shall be established on the basis of the individual's claim that he or she is African American, Hispanic, Asian or Native American, as defined in Section 2-1443, and is so regarded by that particular racial or ethnic community.



(2) An eligible African American-, Hispanic-, Asian-, Native American- or Female-owned business under this section shall be a viable, independent and continuing operation for profit located within the Atlanta Region, as defined in Section 2-1443, performing a commercially useful function, which is owned and controlled by one or more African Americans, Hispanics, Asians, Native Americans or females respectively. The ownership and control by African Americans, Hispanics, Asians, Native Americans or females shall be real and substantial and shall be indicated by customary incidents of ownership, as demonstrated by an examination of the substance rather than the form of ownership and operating arrangements.

(3) The African American, Hispanic, Asian, Native American or female owner must possess the power to direct or cause the direction of the management and policies of the business and to make day-to-day decisions, as well as any decisions on matters of management, policy and operations on a full time basis. The business shall not be subject to any formal or informal restrictions which limit the customary discretion of the African American, Hispanic, Asian, Native American or female owners. There shall be no restrictions by partnership agreements, charter requirements or other arrangements which prevent the African American, Hispanic, Asian, Native American and female owners from making a business decision without the cooperation or vote of any owner who is not African American, Hispanic, Asian, Native American or female.

(4) In such instance where the actual management of an African American-, Hispanic-, Asian-, Native American- or Female-owned business is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and



fire the managers can, for the purposes of this division, be considered as controlling the business.

(5) All securities which constitute ownership or control of an entity for purposes of establishing it as an AABE, HBE, ABE, NABE or FBE must be held directly by African American, Hispanic, Asian, Native American or female individuals or by AABEs, HBEs, ABEs, NABEs or FBEs. No securities held in trust or by any guardian for a minor shall be considered held by African Americans, Hispanics, Asians, Native Americans or females in determining the ownership or control of a corporation.

(6) Ownership and control shall be measured as though not subject to the community property interest of a spouse if both spouses certify that only one spouse participates in the management of the business.

If an AABE, HBE, ABE, NABE or FBE applicant is denied certification on the basis of information submitted, the business cannot reapply for certification for a period of one year from the date of the notice of denial, provided that such business shall have the right to appeal such denial under Section 2-1456, and to be certified if such appeal is decided in its favor.

(c) *Investigation.* The Office of Contract Compliance shall investigate African American, Hispanic, Asian, Native American and female business ownership arrangements beyond formal documents submitted by such businesses if:

- (1) The business is applying for certification with the City for the first time;
- (2) The business is newly formed or the business has African American, Hispanic, Asian, Native American and/or female ownership of less than 100 percent;
- (3) There is a previous or continuing employer-employee relationship between or among present owners;



(4) A business which is not an AABE, HBE, ABE, NABE or FBE has an interest in such entity;

(5) The ownership of the business has changed since documents have been submitted to the Office of Contract Compliance;

(6) A review of the documents submitted with the application raises concerns regarding either ownership or control of the business; and/or

(7) The director of the Office of Contract Compliance deems it appropriate.

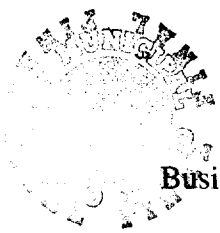
(d) *Term.* The certification as an AABE, HBE, ABE, NABE or FBE shall expire two years from the date of the approval of the application. Following the expiration date, a business is no longer a certified AABE, HBE, ABE, NABE or FBE. An African American-, Hispanic-, Asian-, Native American- or Female-owned business must submit a new application for certification as an AABE, HBE, ABE, NABE or FBE and establish that it continues to meet the requirements in this section in order to be certified as an AABE, HBE, ABE, NABE or FBE.

(e) *Decertification.* The Office of Contract Compliance may decertify a business that it finds is not or is no longer a *bona fide* AABE, HBE, ABE, NABE or FBE. Any of the following reasons, which are not intended to be all-inclusive, are sufficient grounds for decertification:

(1) The business has changed to the extent that it no longer satisfies the ownership and/or control requirements of this section;

(2) The business fails to submit within a reasonable time period information requested by the Office of Contract Compliance;

(3) The business ceases to be a viable enterprise for profit because of involuntary bankruptcy, dissolution or other cessation of commerce.



Businesses decertified for reasons other than by voluntary request may not apply for recertification for such time as may be specified, up to one year. A business that is decertified may file an appeal under Section 2-1456.


(f) *Continuing duty.* Certified AABEs, HBEs, ABEs, NABEs and FBEs shall be under a continuing duty to inform the Office of Contract Compliance in writing of any changes in the AABEs, HBEs, ABEs, NABEs or FBEs business if, as a result of such changes, the AABEs, HBEs, ABEs, NABEs or FBEs no longer satisfies the requirements of paragraph (b) of this section.

SECTION 2-1456 **Appeals**

(a) *Determination of noncompliance.* An Eligible Bidder that is determined to be noncompliant with the requirements of this division, and that otherwise would have been awarded a contract, as determined in consultation with the director of the Bureau of Purchasing and Real Estate, shall receive a written determination by the director of the Office of Contract Compliance, via certified mail, setting forth the reasons for the determination of noncompliance.

(b) *Denial of certification as an AABEs, HBEs, ABEs, NABEs or FBEs, or denial of approval as an Eligible Bidder.* Upon a denial of certification as an AABEs, HBEs, ABEs, NABEs or FBEs, or upon denial of approval as an Eligible Bidder, the director of the Office of Contract Compliance shall notify the affected party in writing, via certified mail, setting forth the reasons for the denial of approval or certification.

(c) *Time for filing Notice of Appeal.* Any business that has been denied certification as an AABEs, HBEs, ABEs, NABEs or an FBEs, or denied approval as an Eligible Bidder, or against whom a final determination of noncompliance with the requirements of this division has been



made by the director of the Office of Contract Compliance, may appeal the final determination of noncompliance or denial of AABE, HBE, ABE, NABE or FBE certification or denial of approval as an Eligible Bidder, by filing a notice of appeal with the director of the Office of Contract Compliance in writing within seven (7) calendar days of receipt of the notice of the final determination of noncompliance or denial of approval or certification.

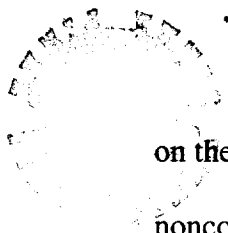
(d) *Notice of hearing date and hearing.* Within three (3) calendar days of receipt of a notice of appeal from an aggrieved party, excluding official holidays, the director of the Office of Contract Compliance shall forward the notice to the contract compliance hearing officer.

(e) *Duties of contract compliance hearing officer.* The duties of the contract compliance hearing officer shall be as follows:

(1) The contract compliance hearing officer shall set a hearing date not more than seven (7) calendar days from the date of receipt of the notice of appeal from the director of the Office of Contract Compliance, excluding official holidays. The hearing officer shall cause notice of the hearing to be served upon all parties by certified U.S. mail. Such notice shall set forth with particularity the decision being appealed by the aggrieved business and shall include the hearing date, time and place.

(2) At the hearing, all parties shall be provided a fair and impartial hearing and shall be allowed to produce any and all evidence in either party's possession concerning the final determination of noncompliance with the requirements of this division, or the denial of certification as an AABE, HBE, ABE, NABE or FBE, or the denial of approval as an Eligible Bidder.

(f) *Decision.* Within seven (7) calendar days after conclusion of the hearing, excluding official holidays, the contract compliance hearing officer shall make a written decision



on the appeal, which decision shall affirm, alter or reverse the final determination of noncompliance or the denial of certification or the denial of approval by the director of the Office of Contract Compliance. The hearing officer shall decide whether the final determination of noncompliance or the denial of certification or the denial of approval being appealed was in accordance with the law before the contract is awarded or penalties are imposed.

(g) *Notice of Decision.* Within seven (7) calendar days after conclusion of the hearing, excluding official holidays, the contract compliance hearing officer shall issue written notice of the decision on the appeal to all parties. The notice of the decision shall be sent to all parties by certified U.S. mail and shall set forth the reasons for the decision.

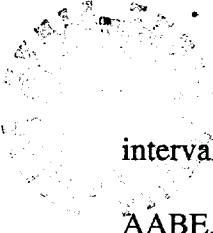
(h) *Appeal.* The decision of the hearing officer shall be binding on all parties, subject to the right of appeal as provided by O.C.G.A. §§ 5-4-1, *et. seq.*

SECTION 2-1457

Outreach and Assistance by the Office of Contract Compliance

To ensure that opportunities to participate on City contracts are available to the widest feasible universe of interested, available and qualified businesses, the Office of Contract Compliance shall develop and engage in outreach designed to increase public awareness of the Equal Business Opportunity Program, and to increase the number and variety of available businesses in its register of certified AABE, HBE, ABE, NABE and FBEs, which may include any or all of the following:

(a) *Public awareness of Equal Business Opportunity Program.* To increase the visibility of the Office of Contract Compliance and to increase the awareness of the Equal Business Opportunity Program, the Office of Contract Compliance shall disseminate at community events, trade shows, and other appropriate business functions, and publish at regular



intervals, in print and in electronic media (including publications or electronic media targeted to AABE, HBE, ABE, NABE and FBEs) information describing the Equal Business Opportunity Program and the functions of the Office of Contract Compliance, identifying ongoing contracting opportunities, and providing contact information by which businesses may obtain additional information from the Office of Contract Compliance.

(b) *Outreach to AABE, HBE, ABE, NABE and FBEs.* The Office of Contract Compliance shall assist eligible businesses in obtaining certification as AABEs, HBEs, ABEs, NABEs or FBEs by disseminating information in print or electronic form, providing individualized counseling, and/or conducting seminars regarding the certification process. To the extent feasible, the Office of Contract Compliance shall enter into arrangements to share data regarding AABEs, HBEs, ABEs, NABEs and FBEs with other agencies or jurisdictions in the Atlanta Region with a Minority or female business enterprise program (e.g., MARTA, Georgia Department of Transportation, city or county governments, private or public organizations), and to encourage reciprocity in certification of AABEs, HBEs, ABEs, NABEs and FBEs.

(c) *Outreach to Potential Bidders and to Eligible Bidder applicants.* The Office of Contract Compliance shall assist businesses in obtaining approval as Eligible Bidders and in submitting bids for Eligible Projects by disseminating information in print or electronic form, providing individualized counseling, and/or conducting seminars regarding the process for obtaining approval as an Eligible Bidder, and for submitting a bid. The Office of Contract Compliance shall provide information and advice to the Bureau of Purchasing and Real Estate regarding the effectiveness of current bidding procedures in facilitating bidding on Eligible Projects by the widest feasible universe of interested businesses, including AABEs, HBEs, ABEs, NABEs and FBEs, and regarding how to arrange solicitations, times for the presentation



of bids, quantities, specifications, and delivery schedules in ways that facilitate the participation of all interested businesses, regardless of race, gender or ethnicity.

(d) *Financial and technical assistance.* The Office of Contract Compliance shall develop a resource directory to be provided to interested businesses, with information regarding assistance in bonding and financing, financial management, accounting, construction management and technical assistance.

(e) *Electronic Access to Information.* To ensure the dissemination of information to the widest feasible universe of potential contractors and/or Eligible Bidders, the Office of Contract Compliance shall publish at regular intervals, both electronically on its Internet web site, and in print, a listing of currently certified AABEs, HBEs, ABEs, NABEs and FBEs and currently approved Eligible Bidders, and their areas of expertise.

(f) *Additional outreach.* The Office of Contract Compliance is authorized to develop and implement such other and further outreach activities and programs as the director may from time to time recommend.

SECTION 2-1458 **Reports by the Office of Contract Compliance**

(a) The director of the Office of Contract Compliance shall cause to be issued periodically, but no later than 30 months after the effective date of this ordinance, reports on the operation of this division. The director shall be authorized to contract with or retain outside consultants or experts in connection with preparing a report and to assist in assembly, review and analysis of data necessary to prepare such report.

(b) The Office of Contract Compliance shall provide to such consultants or experts such records in its custody as may be necessary to evaluate the operation of this division and the



extent to which the purposes of this division are accomplished. A report shall include any findings or recommendations regarding the economic opportunities available to AABEs, HBES, ABES, NABEs and FBES in the Atlanta Region and any recommendations regarding changes to this division or the enactment of any additional programs, procedures or strategies to better effectuate the purposes of this division.

(c) Periodically, but no later than 18 months after the effective date of this ordinance, the Office of Contract Compliance shall conduct an internal investigation and evaluation of the impact of this division on the utilization of ABES and NABES on Eligible Projects. If, after investigation by the Office of Contract Compliance, the director in his or her discretion determines that there is substantial evidence of under-utilization of ABES and NABES on Eligible Projects, as compared with the availability of ABES and/or NABES, then the director shall cause to be issued a report regarding the utilization of ABES and NABES in the Atlanta Region. The director shall be authorized to contract with or retain outside consultants or experts in connection with preparing a report and to assist in assembly, review and analysis of data necessary to prepare such report. A report shall include any findings or recommendations regarding whether the available data supports the inclusion of ABES or NABES in an equal business opportunity program, and, if so, any recommendations regarding changes to this division or the enactment of any additional programs, procedures or strategies to implement such inclusion.

(d) Reports issued under this section shall be delivered to the Mayor and to the City Council, a copy of any report(s) shall be maintained at the Office of Contract Compliance for review, and copies shall be made available to the general public upon written request.



SECTION 2-1459

Severability

If any provision of this article or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provisions or applications, and are to this end declared to be severable.

SECTIONS 2-1460 through 2-1480

Reserved

SECTION TWO:

That all ordinances and parts of ordinances in conflict herewith are hereby repealed.

A true copy,

Rhonda Daughlin Johnson
Municipal Clerk, CMC

ADOPTED as amended by the Council
APPROVED by the Mayor

FEB 19, 2001
FEB 24, 2001



RCS# 2653
2/19/01
9:30 PM

Atlanta City Council

Regular Session

00-O-1859

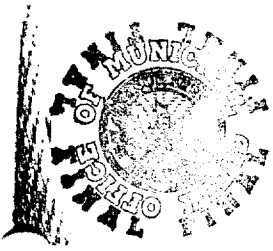
Enact New Code Sec. "The Equal Business
Opportunity Program" for 5 yr. period
ADOPT SUB/AMEND

YEAS: 14
NAYS: 1
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0
ABSENT 0

Y McCarty	Y Dorsey	Y Moore	Y Thomas
Y Starnes	Y Woolard	Y Martin	Y Emmons
Y Bond	N Morris	Y Maddox	Y Alexander
Y Winslow	Y Muller	Y Boazman	NV Pitts

CORRECTED COPY

00-O-1859



RCS# 2653
2/19/01
9:30 PM

Atlanta City Council

Regular Session

00-0-1859

Enact New Code Sec. "The Equal Business
Opportunity Program" for 5 yr. period
ADOPT AS AMEND (*substitute*)

YEAS: 14
NAYS: 1
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0
ABSENT 0

Y McCarty	Y Dorsey	Y Moore	Y Thomas
Y Starnes	Y Woolard	Y Martin	Y Emmons
Y Bond	N Morris	Y Maddox	Y Alexander
Y Winslow	Y Muller	Y Boazman	NV Pitts

00-0-1859

RCS# 2652
2/19/01
9:29 PM

Atlanta City Council

Regular Session

00-O-1859

Enact New Code Sec. "The Equal Business
Opportunity Program" for 5 yr. period
AMEND#1/WOOL #1

YEAS: 15
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0
ABSENT 0

Unanimous

Y McCarty	Y Dorsey	Y Moore	Y Thomas
Y Starnes	Y Woolard	Y Martin	Y Emmons
Y Bond	Y Morris	Y Maddox	Y Alexander
Y Winslow	Y Muller	Y Boazman	NV Pitts

00-O-1859

00-0 -1859

(Do Not Write Above This Line)

ORDINANCE

BY *[Signature]* CITY CLERK
[Signature] DEPUTY CITY CLERK
AN ORDINANCE TO REPEAL PART TWO, ARTICLE X, DIVISION 12 OF THE CODE OF ORDINANCES OF THE CITY OF ATLANTA SO AS TO ENACT A NEW PART TWO, ARTICLE X, DIVISION 12, KNOWN AS "THE EQUAL BUSINESS OPPORTUNITY PROGRAM" FOR A THREE-YEAR PERIOD; CONSISTENT WITH CERTAIN FINDINGS BASED ON THE ECONOMIC RESEARCH SERVICES REPORT AND OTHER DATA RELATIVE TO THE BUSINESS OPPORTUNITIES AVAILABLE TO MINORITY-AND-FEMALE-OWNED BUSINESSES IN THE ATLANTA REGION; TO REPEAL CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES.

APPROVED BY:

ADOPTED BY

ROSALIND RUBENS NEWELL FEB 19 2001
DEPUTY CITY ATTORNEY

COUNCIL

AS AMENDED

- ☐ CONSENT REFER
☐ REGULAR REPORT REFER
☐ ADVERTISE & REFER
☐ 1st ADOPT 2nd READ & REFER
☒ PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

11/6/00

Finance / Executive

First Reading

Committee _____
Date _____
Chair _____
Referred to _____

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

FINAL COUNCIL ACTION

☒ 2nd ☐ 1st & 2nd ☐ 3rd
Readings
☐ Consent ☐ V Vote ☒ AC Vote

CERTIFIED

CERTIFIED

FEB 19 2001

ATLANTA CITY COUNCIL (HHS-0001)

CERTIFIED

FEB 19 2001

Phyllis Douglas Johnson
MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

FEB 24 2001

MAYOR